

AGREEMENT FOR EXECUTIVE SECRETARY SERVICES

AGREEMENT made and entered into this 15th day of June, 2010, by and between the Department of Labor, 700 Governors Drive, Pierre, SD 57501, the Board of Barber Examiners, 810 North Main, #228, Spearfish, SD 57783 (hereinafter the "State") and Carol Tellinghuisen, 810 North Main, #228, Spearfish, SD 57783 (hereinafter the "Contractor").

The State hereby enters into this Agreement for services with Contractor in consideration of and pursuant to the terms and conditions set forth herein.

Section I. Scope of Work

The Contractor under this Agreement will perform the following services:

- A. Administer under the direction of the Board of Barber Examiners ("Board"), the various licensing responsibilities including such duties as application screening, eligibility determination, records retention, and ADA requirements; serve as liaison between the Board and State Agencies; coordinate administration of all examinations of South Dakota applicants; maintain current listing, files and appropriate documentation of all licensees, and determine eligibility for and process renewal applications; serve as liaison between Attorney General's Office and Complaints officer on all complaints received by the Board, including contracting investigators, when needed; and
- B. Serve as Executive Secretary to the Board and perform administrative duties, including handling routine correspondence, telephone inquiries, the processing of state vouchers, administration of appropriate fiscal records, prepare annual budget; prepare travel vouchers for all board members and other duties which may reasonably be expected to be performed; and
- C. Schedule, coordinate, and attend when necessary all regular and special meetings of the Board and provide appropriate notice as required by law; prepare agendas and financial reports; and
- D. Contractor shall be free to dispose of her time as she sees fit during those regular business hours that are not obligated to be devoted to the Board. Neither Contractor, nor any employee thereof, shall be considered under the provision of this Agreement, or otherwise, as having the status of an employee, or as being entitled to participation in any plans, arrangements or benefits of the Board or State that are available to regular employees of the State, members or officers, unless expressly provided for by the terms of this Agreement; and
- E. It is mutually agreed that Contractor shall be individually and primarily responsible for the performance of the obligations imposed by this Agreement; provided, however, that Contractor may employ such other persons to assist in the performance of this Agreement as she sees fit.

Section II. Payment Provision

The agreed upon rate for services performed under this Agreement is \$1,206.25 per month (\$14,475.00 year-end total). The State will pay \$50.00 per month for the Board's rent and Contractor's expenses as a separate item in an amount not to exceed \$7,000. Expenses will be reimbursed at state rates as established by the State Board of Finance. The TOTAL CONTRACT AMOUNT is an amount not to exceed \$21,475.00. Payment will be made pursuant to signed, monthly itemized invoices submitted to the State and subject to any ordinary State payment clearance requirements.

Section III. Payments Include All Taxes

Payments made to the Contractor as specified herein shall be deemed to include all taxes of any description, federal, state or municipal assessed against the Contractor by reason of this Agreement.

Section IV. Term of the Agreement

The Contractor's services under this Agreement shall commence on July 1, 2010, and end on June 30, 2011, unless sooner terminated pursuant to the terms hereof.

Section V. Independent Contractor Provision

While performing the services hereunder, the Contractor is an Independent Contractor, and not an officer, agent, or employee of the State of South Dakota. The Contractor will not use State equipment, supplies or facilities.

Section VI. Hold Harmless and Indemnification Provision

The Contractor agrees to indemnify and hold the State of South Dakota, its officers, agents and employees, harmless from and against any and all actions, suits, damages, liability or other proceedings that may arise as the result of performing services hereunder. This section does not require the Contractor to be responsible for or defend against claims or damages arising solely from errors or omissions of the State, its officers, agents or employees.

Section VII. Insurance Provisions

The Contractor, at all times during the term of this Agreement, shall obtain and maintain in force insurance coverage of the types and with the limits as follows:

A. Commercial General Liability Insurance:

Contractor shall maintain occurrence based commercial general liability insurance or equivalent form with a limit of not less than \$1,000,000 for each occurrence. If such insurance contains a general aggregate limit it shall apply separately to this Agreement or be no less than two times the occurrence limit.

B. Professional Liability Insurance or Miscellaneous Professional Liability Insurance:

Contractor agrees to procure and maintain professional liability insurance or miscellaneous professional liability insurance with a limit not less than \$1,000,000.

C. Business Automobile Liability Insurance:

Contractor shall maintain business automobile liability insurance or equivalent form with a limit of not less than \$500,000 for each accident. Such insurance shall include coverage for owned, hired and non-owned vehicles.

D. Worker's Compensation Insurance:

Contractor shall procure and maintain workers' compensation and employers' liability insurance as required by South Dakota law.

Before beginning work under this Agreement, Contractor shall furnish the State with properly executed Certificates of Insurance which shall clearly evidence all insurance required in this Agreement and which provide that such insurance may not be canceled, except on 30 days' prior written notice to the State. Contractor shall furnish copies of insurance policies if requested by the State.

Section VIII. Termination Provision

This Agreement may be terminated by either party hereto upon thirty (30) days written notice. In the event the Contractor breaches any of the terms or conditions hereof, this Agreement may be terminated by the State at any time with or without notice. If termination for such a default is effected by the State, any payments due to the Contractor at the time of the termination may be adjusted to cover any additional costs to the State because of Contractor's default. Upon termination, the State may take over the work and may award another party an agreement to complete the work under this Agreement. If, after the State terminates for a default by Contractor, it is determined that Contractor was not at fault, then Contractor shall be paid for eligible services rendered and expenses incurred up to the date of termination.

Section IX. Default Provision

This Agreement depends upon the continued availability of appropriated funds and expenditure authority from the Legislature for this purpose. If for any reason the Legislature fails to appropriate funds or grant expenditure authority, or funds become unavailable by operation of law or federal funds reductions, this Agreement will be terminated by the State. Termination for any of these reasons is not a default by the State nor does it give rise to a claim against the State.

Section X. Amendment Provision

This Agreement may not be amended except in writing, which writing shall be expressly identified as a part hereof, and be signed by an authorized representative of each of the parties hereto. Any such amendment is subject to the same approval requirements as in this Agreement.

Section XI. Controlling Law Provision

This Agreement shall be governed by and construed both as to interpretation and performance in accordance with the laws of the State of South Dakota. Any lawsuit pertaining to or affecting this Agreement shall be venued in Circuit Court, Sixth Judicial Circuit, Hughes County, South Dakota.

Section XII. Compliance Provision

The Contractor will comply with all federal, state and local laws, regulations, ordinances, guidelines, permits and requirements applicable to providing services pursuant to this Agreement, and will be solely responsible for obtaining current information on such requirements.

Section XIII. Subcontractor Provision

The Contractor may not use subcontractors to perform the services described herein without the express prior written consent of the State. The Contractor will include provisions in its subcontracts requiring its subcontractors to comply with the applicable provisions of this Agreement, to indemnify the State, and to provide insurance coverage for the benefit of the State in a manner consistent with this Agreement. The Contractor will cause its subcontractors, agents, and employees to comply, with applicable federal, state and local laws, regulations, ordinances, guidelines, permits and requirements and will adopt such review and inspection procedures as are necessary to assure such compliance.

Section XIV. Reporting Provision

Contractor agrees to report to the State any event encountered in the course of performance of this Agreement which results in injury to any person or property, or which may otherwise subject Contractor, or the State of South Dakota or its officers, agents or employees to liability. Contractor shall report any such event to the State immediately upon discovery.

Contractor's obligation under this section shall only be to report the occurrence of any event to the State and to make any other report provided for by their duties or applicable law. Contractor's obligation to report shall not require disclosure of any information subject to privilege or confidentiality under law (e.g., attorney-client communications). Reporting to the State under this section shall not excuse or satisfy any obligation of Contractor to report any event to law enforcement or other entities under the requirements of any applicable law.

Section XV. Notice Provision

Any notice or other communication required under this Agreement shall be in writing and sent to the address set forth above. Notices shall be given by and to Todd Kolden at 700 Governors Drive, Pierre, SD 57501, on behalf of the State, and by and to Carol Tellinghuisen at 810 North Main, #298, Spearfish, SD 57783, on behalf of the Contractor, or such authorized designees as either party may from time to time designate in writing. Notices or communications to or between the parties shall be deemed to have been delivered when mailed by first class mail, provided that notice of default or termination shall be sent by registered or certified mail, or, if personally delivered, when received by such party.

Section XVI. Severability Provision

In the event that any provision of this Agreement shall be held unenforceable or invalid by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision hereof.

Section XVII. Supercession Provision

All other prior discussions, communications and representations concerning the subject matter of this Agreement are superseded by the terms of this Agreement, and except as specifically provided herein, this Agreement constitutes the entire agreement with respect to the subject matter hereof.

Section XVIII. Records Retention and Retention Provision

The State, through any authorized representative, will have access to and the right to examine and copy all records, books, papers or documents related to the services rendered under this Agreement. The Contractor will retain all records, books, papers and documents related to the services performed under this Agreement for a period of not less than the greater of any applicable federal law retention requirement or three years following the termination of this Agreement. All records shall be delivered to the State or any authorized representative upon completion or termination of services under this Agreement.

In Witness Whereof, the parties signify their agreement effective the date above first written by the signatures affixed below.

STATE

BY: 

Robert Johnson
Board President

Date: 6/10/10

CONTRACTOR

BY: 

Carol Tellinghuisen

Date: 6/8/10

BY: 

Pamela Roberts
Department Secretary

Date: 6-18-10

State Agency Coding (MSA Center) 103200061804

State Agency MSA Company for which contract will be paid 6503

Object/subobject MSA account to which voucher will be coded 52040900

Name and phone number of contact person who can provide additional information regarding this contract: Todd Kolden 605-773-3101.